## BEFORE THE TENNESSEE REGULATORY AUTHORITY AT NASHVILLE, TENNESSEE

May	9, 2005	
IN RE: PETITION OF ATMOS ENERGY CORPORATION FOR APPROVAL OF A FRANCHISE AGREEMENT WITH BEDFORD COUNTY, TENNESSEE	) ) ) ) )	DOCKET NO. 03-00484

# INITIAL ORDER APPROVING PETITION OF ATMOS ENERGY CORPORATION FOR APPROVAL OF A FRANCHISE AGREEMENT WITH BEDFORD COUNTY, TENNESSEE

This matter is before the Hearing Officer for consideration of the *Petition of Atmos Energy Corporation for Approval of a Franchise Agreement with Bedford County, Tennessee* ("*Petition*"). On January 20, 2004, a hearing was held before the Hearing Officer for the purpose of allowing Atmos Energy Corporation ("Atmos" or "Petitioner") and Bedford County, Tennessee ("Bedford County" or the "County") to introduce evidence in support of their request for approval of Atmos' *Petition* and Bedford County's Ordinance (attached to the *Petition* as Exhibit A) granting Atmos a franchise to operate its natural gas distribution system within County rights-of-way ("Ordinance").

After careful consideration of the *Petition*, the Ordinance and the entire record in this matter, including testimony from Atmos and Bedford County, the Hearing Officer approves the *Petition*, the Ordinance, and the franchise granted to Atmos by Bedford County.

#### Travel of the Case

Atmos filed the *Petition* on August 22, 2003. In its *Petition* Atmos asks that the franchise agreement embodied in the Ordinance be approved.

The *Petition* states that the Bedford County Board of Commissioners passed the Ordinance on June 10, 2003.<sup>1</sup> The *Petition* describes the Ordinance as granting Atmos a thirty (30) year non-exclusive franchise and notes that it does not contain a franchise fee.<sup>2</sup>

The Hearing on the merits was held on January 20, 2004. Attorney Joe A. Conner appeared on behalf of Atmos. Members of the Authority's Energy and Water Division attended and participated in the Hearing. The prepared testimony of Denise Manning, Atmos' Public Affairs Manager was made an exhibit during the January 20, 2004. Ms. Manning also provided live testimony in support of the *Petition*, was examined by counsel and responded to questions from Authority Staff.<sup>3</sup> Ms. Manning's testimony re-affirmed her prepared testimony and described the general physical layout and location of the Atmos system located in Bedford County as well as the approximate number and types of customers located in Bedford County.<sup>4</sup> Ms. Manning also testified that Atmos would not be able to adequately operate and maintain its Bedford County system without access to the public rights of way in Bedford County.<sup>5</sup> In response to a question from Authority Staff, she testified that there would be no franchise fee imposed under the Bedford County Ordinance.<sup>6</sup>

<sup>&</sup>lt;sup>1</sup> Petition, p. 1 (August 22, 2003).

 $<sup>^2</sup>$  Id n 2

Transcript of Proceedings, pp. 10-12 (January 20, 2004).

Direct Testimony of Denise Manning, p. 1 (January 20, 2004).

<sup>&</sup>lt;sup>6</sup> Transcript of Proceedings, p. 12 (January 20, 2004).

During the Hearing all filings in the docket through the date of the Hearing were made a part of the evidentiary record. At the conclusion of the Hearing, the Hearing Officer took the matter under advisement.

### Findings and Conclusions

Tenn. Code Ann. § 65-4-107 provides that no grant of a privilege or franchise from the State or a political subdivision of the State to a public utility shall be valid until approved by the Authority. Approval pursuant to Tenn. Code Ann. § 65-4-107 requires a determination by the Authority, after hearing, that "such privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest." Tenn. Code Ann. § 65-4-107 further provides that in considering such privilege or franchise, the Authority "shall have the power, if it so approves, to impose conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require . . . "8

A privilege or franchise granted by the State or a political subdivision thereof to a public utility is not valid until approved by the Authority, after a hearing and a determination of the public convenience and necessity and the public interest. Notwithstanding the assertion in the *Petition*, and in the testimony of the witnesses in support of the *Petition*, the Authority must still make an independent public interest determination.

Atmos and Bedford County have provided testimony and documentation which demonstrates the beneficial nature of the proposed service. Atmos has demonstrated a reliable presence in Bedford County. The County has concluded, as is evidenced by the Ordinance, that Atmos has the capability and experience to provide natural gas service to its citizens. Atmos has demonstrated a reasonable plan for providing natural gas service to the residents of Bedford

<sup>8</sup> Id.

<sup>&</sup>lt;sup>7</sup> Tenn. Code Ann. § 65-4-107.

County and has demonstrated that it has the means and capacity to do so. Atmos' franchise agreement with the County continues a longstanding franchise arrangement in a community where Atmos has extensive operations that rely on use of the public rights-of-way. This franchise arrangement, which has not been contested, has been and continues to be of mutual benefit to Atmos, its customers, and the community in Bedford County and is thus in the public interest. Atmos has made a sufficient showing that the franchise granted by Bedford County and is necessary and proper for the public convenience and properly conserves the public interest as is required by Tenn. Code Ann. § 65-4-107. Further, Atmos has demonstrated that it will comply with all rules and regulations of the Authority, including those rules pertaining to minimum federal safety requirements.

Based on the foregoing findings, the Hearing Officer concludes that the *Petition*, the Bedford County Ordinance and the franchise granted to Atmos therein by Bedford County is necessary and proper for the public convenience and properly conserves the public interest and should be approved.

## IT IS THEREFORE ORDERED THAT:

- 1. The Bedford County Ordinance is approved and is incorporated in this Order as if fully rewritten herein.
- 2. The franchise granted to Atmos Energy Corporation through the Ordinance passed by the County Board of Commissioners of Bedford County, Tennessee on June 10, 2003 and accepted by Atmos Energy Corporation is approved.

<sup>&</sup>lt;sup>9</sup> Ms. Manning testified that Atmos serves approximately 7,230 customers in Bedford County with its natural gas distribution system and that a majority of the pipeline serving the Bedford County customers is located within the public rights-of-way. See Direct Testimony of Denise Manning, p. 2 (January 20, 2004).

3. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration with the Hearing officer within fifteen (15) days from the date of this Order.

4. Any party aggrieved by the decision of the Hearing Officer in this matter may file a Petition for Appeal with the Tennessee Regulatory Authority within fifteen (15) days from the date of this Order.

5. In the event this Order is not appealed to the Directors of the Tennessee Regulatory Authority within fifteen (15) days, this Order shall become final and shall be effective from the date of entry. Thereafter, any party aggrieved by the decision of the Hearing Officer, may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from the date of this Order.

Randal L. Gilliam as Hearing Officer